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Attorney for Plaintiff
TONY QUINCY

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In Re:) Case No.: 09-42119-RJN13
) Adv. No.:
Tony C. Quincy)
) CHAPTER 13
Debtor(s))
)
) COMPLAINT TO RECOVER FUNDS
) SEIZED 11 USC 547(B) AND FOR
) CONTEMPT FOR VIOLATION OF THE
) AUTOMATIC STAY
Tony C. Quincy)
)
Plaintiff(s),)
)
vs.)
)
No Credit Check Auto Sales,)
Inc.; Fidelity Creditor)
Services, Inc., DBA)
Metropolitan Adjustment Bureau)
)
Defendant(s))
)
)

Comes Now Plaintiff Tony C. Quincy AKA Tony Quincy,
Debtor/Plaintiff in the above-captioned matter and alleges as

1 follows:

2
3 **GENERAL ALLEGATIONS**

4 1. Plaintiff commenced Case No. 09-42119-RJN13 by filing
5 a voluntary Chapter 13 petition in the United States Bankruptcy
6 Court for the Northern District of California, Oakland Division
7 on or about March 18, 2009.

8 2. This is an adversary proceeding to recover funds
9 seized, pursuant to a levy, from Plaintiff's bank account on
10 January 23, 2009. It is also an adversary proceeding for
11 contempt for willful violation of the automatic stay under 11
12 USC §362.

13 3. This Court has jurisdiction to hear these proceedings
14 pursuant to 28 USC § 1334. This is a core proceeding pursuant
15 to 28 USC §157 because it involves substantive rights of the
16 debtor.

17 4. Plaintiff is informed and believes that defendant No
18 Credit Check Auto Sales is a corporation which does business in
19 the United States and in this District.

20 5. Plaintiff is informed and believes that defendant
21 Fidelity Creditor Services, Inc., is a Corporation which does
22 business in the United States and in this District as
23 Metropolitan Adjustment Bureau.

24 6. On or about January 23, 2009, pursuant to a judgment,
25 defendants, acting as agents, assignees, successors in interest

1 of each other, levied Debtor's bank account, obtaining
2 \$6,308.09.

3 7. This levy was for an antecedent debt, and within 90
4 days of the filing of the bankruptcy petition herein.

5 8. Pursuant to 11 U.S.C. §547(b) this debt is
6 recoverable.

7 9. On March 20, and again, on April 10, Plaintiff, by and
8 through his counsel, communicated with defendants and/or its
9 agents, and demanded that they return said funds. Defendants
10 have willfully refused to do so.

11 10. Fidelity Creditor Services, Inc. was scheduled as a
12 creditor and received notice of Debtor's Bankruptcy filing.

13 11. Notwithstanding notice and notwithstanding the
14 automatic stay under 11 USC §362, on March 25, 2009 Metropolitan
15 Adjustment Bureau, as agent for Defendant No Credit Check Auto
16 Sales, Inc., again caused to be issued a levy against
17 Plaintiff's Wells Fargo Bank deposit accounts and safe deposit
18 contents. Though no funds were available for taking, Plaintiff
19 was assessed a bank charge in excess of \$97.

20 **FIRST CAUSE OF ACTION**

21 **(Against No Credit Check Auto Sales, Inc.)**

22 12. Plaintiff re-alleges as though fully set forth herein
23 the allegations set forth in paragraph 1 through 11, inclusive
24 above.

1 13. On or about January 23, 2009, pursuant to a judgment,
2 defendant No Credit Check Auto Sales, Inc. levied Debtor's bank
3 account, obtaining \$6,308.09.

4 14. This levy was for an antecedent debt, and within 90
5 days of the filing of the bankruptcy petition herein.

6 15. Pursuant to 11 U.S.C. §547(b) this debt is
7 recoverable.

8 **SECOND CAUSE OF ACTION**

9 (Against No Credit Check Auto Sales, Inc.
10 and
11 Fidelity Creditor Services, Inc.)

12 16. Plaintiff re-alleges as though fully set forth herein
13 the allegations set forth in paragraph 1 through 15, inclusive
14 above.

15 17. Defendants had actual notice of Debtor's bankruptcy
16 filing from the Clerk of the Court.

17 18. Defendants had notice by letter from Debtor's counsel
18 regarding debtor's bankruptcy filing.

19 19. Notwithstanding 11 USC §362, Defendants have proceeded
20 with their collection activities against Debtor.

21 WHEREFORE, Plaintiff prays for judgment as follows:

- 22 a. Against No Credit Check Auto Sales, Inc. for turnover
23 of \$6,308.09 to the debtor of funds collected within 90
24 days of the filing of the petition; and
25 b. Against Defendants No Credit Check Auto Sales, Inc. and
 Fidelity Creditor Services, Inc. for \$97.00 bank fees,

- 1 c. Against Defendants No Credit Check Auto Sales, Inc. and
2 Fidelity Creditor Services, Inc. punitive damages for
3 willful violation of the automatic stay;
4 d. An order enjoining all defendants from seizing,
5 levying, attaching, or in any way interfering with
6 property rights of Debtor, or in any other way
7 attempting to collect pre-judgment debts of Debtor;
8 e. For the costs and attorney fees incurred in bringing
9 this action;
10 f. For such other and further relief as the Court may find
11 proper.

12 April 16, 2009

13 THE FULLER LAW FIRM

14
15 By: /s/Lars T. Fuller

16 Lars T. Fuller
17 Attorney for Plaintiff/Debtor
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